

REMARKS

In this paper, Applicant has amended claims 37 and 63-65. Claims 37-65 are pending. Reconsideration of this application, as amended, is requested.

Claim 37 has been amended to better clarify the claimed invention, in that the dimensional change sensor measures the dimensional change of the tissue. Support for this amendment can be found, for example, in page 8, lines 23-26 and also in claim 41.

Each of claims 63-65 has been rewritten in independent form.

Please charge Deposit Account 13-2725 the amount of \$200.00 for 1 independent claim over that previously paid for.

Claim Rejections

Claims 37-51 and 53-62 were rejection under 35 U.S.C. 102(b) as anticipated by Farley, U.S. Patent No. 6,033,398. Applicant respectfully disagrees.

Farley provides an electrosurgical instrument having an end effector that provides radio frequency power and a fluid, the power sufficient to cause a dimensional change (i.e., shrinkage) of the tissue, the end effector having two electrodes, a fluid outlet, and a temperature sensor. Farley describes that "monitoring the temperature of the vein tissue can provide a good indication of when shrinkage of the vein tissue is ready to begin. ... [and] can also provide an indication for when shrinkage occurs." (column 11, lines 53-60).

Claim 37, as amended, recites that the dimensional change sensor measures the dimensional change of the tissue (emphasis added), not just detects the dimensional change. Farley merely detects a temperature, which can be correlated to dimensional change. There is no teaching or suggestion of having a feature that measures the dimensional change of the tissue.

At least for this reason, Farley does not anticipate claim 37, nor does Farley render claim 37 obvious. Each of claims 38-51 and 53-62 depends from and has further limitations over claim 37. Each of claims 38-51 and 53-62 is allowable over Farley at least for the same reasons that claim 37 is allowable.

Applicant requests withdrawal of this rejection.

Double Patenting

Claims 37-65 were rejected on the ground of nonstatutory obviousness-type double patenting over U.S. Patent No. 6,689,131, of which this pending application is a continuation application. Applicant will submit a Terminal Disclaimer over U.S. Patent No. 6,689,131, if still appropriate, upon allowance of claims in this application.

Allowable Subject Matter

Claims 63-65 were objected to as being depending upon a rejected base claim, but were indicated to be allowable if rewritten in independent form. Each of claims 63-65 has been rewritten in independent form, by including the limitations of claim 37. Applicant contends that claims 63-65 are in condition for allowance.

Withdrawn Claim

Claim 52, which depends from claim 37, a generic claim, is withdrawn as being directed to a non-elected species. Upon allowance of claim 37, claim 52 is entitled to consideration.


Summary

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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